

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
September 17, 2007
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Board members in attendance were Theresa Blazicevich, Karl Hertel, AJ King, Adele Michels, Steve Michels, and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Vice-Presiding Officer Noble called the meeting to order at 10:06 a.m.

Approval of Minutes

Mr. Hertel moved to accept the minutes of the July 23, 2007 Board meeting. Ms. Michels seconded. **The motion was unanimously approved.**

Dispute – Former Bull River Phillips 66 Station CAP, Noxon, Fac #60-15021, Rel. #3964

Mr. Wadsworth indicated that the Montana Department of Transportation (MDT), at the direction of the Department of Environmental Quality, intended to replace a drive-point at the former Bull River Phillips 66 with a private water well. He stated that the Board staff questioned whether the proposed activity is a reasonable and necessary expenditure of funds. The information available to the staff indicated that there has been no exceedance of drinking water maximum contaminant levels (MCLs) at the drive point, nor any indication that there will be any exceedance of MCLs. The staff notified MDT of their determination, and requested evidence from MDT and DEQ supporting the need to replace the drive-point, since the water from the well meets both EPA and state drinking water standards. No supplemental evidence was provided by either party. In addition, the staff did not believe it reasonable to replace a drive-point with a water-well. Therefore the staff does not recommend reimbursement for replacement of the drive-point. MDT has asked to bring the matter before the Board.

Mr. Wadsworth provided an explanation of the monitoring data, all of which were cleaner than the EPA and State standards for drinking water. No trend could be determined from the available data. As well, the data indicate an unusual spike that could indicate a lab analysis error. The contamination source has already been removed. The staff did not consider the proposal to be reasonable or necessary for corrective action under §75-11-309(1)(g), and therefore recommends those costs not be reimbursable. The drive-point was only 20 feet deep, while the proposed water well would be 50 feet deep and must meet statutory and regulatory guidelines and be installed by a licensed contractor. He described some of the steps necessary to install each type of well. A letter was sent To MDT notifying them of the staff's position.

Pat Skibicki, Montana Department of Environmental Quality, Petroleum Technical Section and case manager of the project provided a brief history of the site. On a map, he pointed out the positions of the town of Noxon, the reservoir, the assumed boundary of the contamination plume and the locations of the old gas station, the garden irrigation drive-point that is the subject of this discussion, and the current domestic water supply well, 300 feet away.

The former Phillips 66 was operated from 1954 to about 1974. The tanks were removed from the ground after the station closed. The Vaneks built the house in the mid 1950s. The original domestic house well was reportedly contaminated by gasoline, requiring them to dig another drive-point. The original house well became the garden irrigation drive-point. In 1991, the Vaneks notified the Department of Health about the contamination in their garden irrigation well. A sample was taken from the irrigation well, which showed contamination. The contamination was not greater than the drinking water standards in effect at the time. The source of the release was not determined at that time.

In 2000 the LUST Trust program conducted a remedial investigation to define the source of the contamination in the irrigation drive-point. On April 18, 2000 it was confirmed that the contamination came from the old gas station and release #3964 was assigned. After discovery of the release, Conoco Phillips, MDT and Don Eckleberry were notified of the release. Mr. Eckleberry owns the property on which the station building was located, MDT owns a portion of the former station, and Conoco Phillips owned the USTs. In April 1995, MDT initiated site investigation and cleanup. Phillips Petroleum denies owning or operating the USTs and contends it is not responsible. In July 2006 the Vaneks granted DEQ access to conduct a remedial investigation. DEQ did some soil borings to try to determine the plume

boundaries. MDT recommended replacing the irrigation drive-point in October 2006, due to continued impacts to the drive-point. Also in October 2006, DEQ requested a corrective action work plan that included replacement of the drive-point. The work plan was submitted in April 2007. Between October 2006 and April 2007, the Vaneks sold the property to the Schrocks.

The rationale for replacement of the drive-point is that, while some source contamination has been cleaned up, a significant source mass remains. Concentrations in groundwater at the contamination source exceed both DEQ risk-based screening levels (RBSLs) and drinking water standards. Petroleum contaminants are going to continue to leach to groundwater and migrate towards the well for the foreseeable future. Neither MDT nor DEQ control access to the well, which could be used for domestic purposes. The water from the irrigation well exceeds DEQ's current RBSLs for C9-C10 aromatics (currently 50 ppb). Benzene, a known carcinogen, has been detected in six sampling events. There are no data available prior to 1991. Concentrations fluctuate over time, and may exceed RBSLs seasonably or during high run-off events, but that is not known at this time. While the benzene concentrations are currently at 2.5 parts per billion (ppb), they may reach 5 ppb (the DEQ standard for benzene) at some time. Mr. Skibicki provided tables showing current and historical contaminant levels in both the source well and the irrigation well. There were several values that exceed the current remediation standards and RBSLs for benzene, C9-C10 Aromatics and TPHs. The cost to replace the drive-point is minimal, and replacement is protective of human health. There is currently a lawsuit pending, involving MDT and Phillips Petroleum, for health impacts associated with the well.

Mr. Hertel asked if there are any impacts to the current domestic supply well.

Mr. Skibicki indicated that no contaminants have been detected in that well.

Mr. Hertel stated that, with the source of the contamination removed, and the well in question is only an irrigation well, he does not see a problem with the current well.

Mr. Skibicki noted that the station and USTs are gone, but there is still a significant mass of contamination in the ground.

Mr. Hertel asked if the contamination was a problem for irrigation

Mr. Skibicki said there was no data available to indicate whether plant uptake of contaminants occurred or was a problem. The monitoring data from the irrigation well show that some contaminants are consistently above the remediation standard, while benzene is only 2 ppb below the standard. Replacing the well is a conservative, protective approach.

Mr. Michels asked for the rationale for replacing the drive-point with a water well, rather than another drive-point

Mr. Skibicki responded that DEQ did not have access to do an investigation until recently. Monitoring was necessary to determine where to put the well, and find an acceptable location near the existing piping and electrical supply. In addition, the vertical extent of the plume is not well defined. DEQ does not anticipate that the contamination is as deep as 50 feet. One of the reasons for drilling deeper is to avoid running into the plume. As well, DEQ does not control the use of the well. While it is currently being used as an irrigation well, there is no guarantee that future owners will not change the use of the well.

Mr. Noble stated that if the water is used for irrigation, there would be degradation of the contaminants by passage through the soil and anaerobic activity within the soil before plant uptake.

Mr. Skibicki acknowledged that there would be some degradation and volatilization during the sprinkling process.

John Arrigo, Acting Bureau Chief, Hazardous Waste Clean-up Bureau, commented that if you sprinkle irrigation water contaminated with benzene on a vegetable, the benzene will evaporate, resulting in minimal uptake of benzene into the vegetables. In addition, the spike in the data could be a sampling error, rather than a lab analysis error, as suggested by Mr. Wadsworth. Things are not constant at the site, which makes a mathematical analysis of the data difficult. He emphasized that, while the tanks and heavily contaminated soil around the tanks have been removed, there is still a large plume of contamination that could present problems if there is a wet season that flushes the contaminants out of the soil to the groundwater. He acknowledged that contamination of an irrigation-well is probably not a significant threat, but reiterated that DEQ does not control the use of the well. He suggested that there are options available that were not presented to the Board. The Board could approve the well for reimbursement. The current well could be fitted with a charcoal filter, but over the long term, such an option is likely to be more expensive than the current proposal.

He also noted that drive-points are usually shallow, and require that the water be sucked out of the well. The diameter of a drive point is not large enough to put a pump at the bottom. The current well was hand-dug for a couple of feet, then

the drive point was installed. It uses a jet-pump to coax water to the surface. Replacing the current well with another drive point would require more work than just installing a drive point, because the piping for a drive-point would not be large enough for a jet –pump to work. The Department recommends that the Board approve the proposed well replacement for reimbursement. The proposal is only for approximately \$2,500.

Mr. Noble noted that, in his experience, most well drillers will not even mobilize on a site unless the work is at least \$5,000.

Brian Goodman, MDT, indicated that the driller lives in the local area and there is no mobilization cost in the bid. He also noted that, with regard to the sample data, all the samples were taken from a tap 20' to 30' from the well itself, and be biased to low contaminant levels relative to the actual amount of contamination. There is biological degradation occurring in the plume. He reiterated that neither MDT nor DEQ has control of the well and want to install a well that is up to standard for any potential future use. It is not their intent to increase the value of the system.

Ms. Blazicevich moved to accept the staff recommendation and deny reimbursement for the costs to replace the drive point with a full inclusive water well. She added that this is a perfect LUST Trust case. She believes that the matter should be allowed to play out, and DEQ should go after the responsible party, rather than have the Petro Board pay for these older releases. Mr. Hertel seconded. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. There are recommendations for four sites to be eligible and one to be ineligible (see table below). The owner of the West Parkway facility has asked that consideration of the eligibility status of the facility be postponed until the November 2007 meeting.

Board Staff Recommendations Pertaining to Eligibility From June 24, 2007 thru September 6, 2007				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Dillon	S & L Quickstop	01-05780	4567 3/19/07	Eligible – 8/2/07
Billings	Empire Motors Inc	56-08351	4582 6/6/07	Eligible – 8/20/07
Billings	West Parkway	56-04951	4496 1/30/03	Ineligible – 8/22/07 – ACTION POSTPONED UNTIL 11/19/2007
Billings	Norms Service former	56-08596	3787 10/22/98	Eligible – 9/4/07
Libby	Libby Fuel Company	99-95023	4466 11/22/05	Eligible – 9/4/07

Mr. Michels moved to accept the staff recommendations on the four eligible releases. Mr. King seconded. **The motion was unanimously approved.**

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are five claims totaling \$846,953.75. All the claims included costs for soil excavation. The claim for L & L Tire contained an ineligible mark-up which the contractor has asked be withdrawn from the claim. He noted that, once the Board makes a determination on these claims, they will be placed in line to be paid, based on their final review date. Mr. Noble recused himself from consideration on the Big Mountain Tire claim, because his company is the consultant on that release.

Ms. Michels asked why the costs on the Big Mountain Tire were higher than expected.

Mr. Noble indicated that the extent of the contamination was wider and deeper than indicated by the monitoring wells. The DEQ case manager directed him to continue excavation in an attempt to remove all the contamination. Therefore, the costs on the excavation were higher than anticipated or budgeted. As it stood, they were unable to reach contamination that was under Highway 93 and the street in front of Whitefish Middle School.

Mr. Hertel asked if it was a good use of the taxpayers money to dig out a site if some contamination cannot be reached and removed. If human health is at risk, it may be worthwhile, but if not, perhaps there are other alternatives.

Mr. Noble agreed. He stated that, in many cases before a dig-out is begun, a risk assessment should to be conducted. A cost/benefit analysis is necessary, and a determination of the likely ultimate long-term use of the property. In some cases it may not be worth the cost to dig out the contamination.

Mr. Wadsworth agreed it was an excellent point. The Board should try to get some additional information that will help it guide the direction it would like to see such cleanups go. It would be helpful to get some information about where these dig outs are going and how we are leaving contamination in place, and what the challenges are to the Fund with regards to the contamination left in place.

Ms. Michels noted that, in the case of the recent dig-out conducted in Scobey, contamination was left under the building. In addition, all four corners of the intersection once held gasoline stations. In such a situation, it is difficult to determine which facility or facilities contributed to the contamination.

Mr. Wadsworth noted that there was a facility in Townsend where the facility was excavated twice because contamination left under the building re-contaminated the soil that had been replaced. He suggested that in some cases the best remediation method may be to install barriers to off-site migration of the contamination, rather than try to remove all of the contaminated soil. Essentially, there needs to be serious evaluation of other types of remediation alternatives. With petroleum contamination, concentrations will continue to decline if the primary source is removed. There must be an evaluation of whether the risk is small enough to allow for sites to be closed.

Mr. Noble indicated that part of the evaluation should be an evaluation of the type of soils involved and what the property will be used for, as well as other risks. However, risk analysis could have a significant impact on the fund.

Mr. Arrigo indicated he agreed with the discussion. However, the DEQ staff is trying to do as much source control as is reasonable without adding exorbitant costs such as excavating highways and removing buildings. The DEQ does have legal requirements that prohibit them from closing a site unless it meets the groundwater standards that are enacted under the Water Quality Act. There is no authority under that act to leave contamination in place if it is low risk. All groundwater is considered state water, regardless of its use, and it all has to be the 5 ppb cleanup standard. Unless an exemption is put into the Water Quality Act, the UST law cannot exempt sites from the water quality standards. The goal of the UST program is to clean up sites to meet the water quality standards as soon as is reasonable.

Mr. Noble acknowledged that Mr. Arrigo has hit the crux of the matter. DEQ views all groundwater as drinking water, regardless of whether a viable well could be installed in a particular aquifer. Other states have the option to use risk-based corrective actions where a risk analysis can be used to determine site closure. Montana law does not allow that option to DEQ.

Mr. Arrigo indicated that there are alternatives that the UST program can evaluate. Some other states use criteria that Montana could look at. Risk-based soil levels used by the state are based on fine sand with certain permeability and degradation characteristics, while many sites have different types of soils. Risk-based cleanup targets could be developed for different soil types.

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments	Copay Met with this claim	Amount to be reimbursed
Hardin	L & L Tire	02-13776	20070228C	\$50,688.92	\$3,308.74		\$47,380.18
Whitefish	Big Mountain Tire	15-11030	20070702A	\$334,635.24	-0-		\$334,635.24
Kalispell	Cenex Harvest States	15-09705	20070724F	\$47,917.06	-0-		\$47,917.06
Huntley	Greens Service & Repair	56-00251	20070803C	\$45,463.50	-0-	X	\$33,199.73
Kalispell	Cenex Harvest States	15-09705	20070824D	\$383,821.54	-0-		\$383,821.54
Total				\$862,526.26			\$846,953.75

Ms. Blazicevich moved to ratify the claims. She also would like the Board to continue the discussion of dig outs, including where they should and should not be conducted based on an evaluation of the geology of the area. She suggested that a more detailed investigation and evaluation be done before a dig out is recommended. Mr. Michels seconded. **The motion was unanimously approved.**

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of July 18, 2007 through August 15, 2007. (See table below). There were 79 claims, totaling \$432,806.00. He pointed out that there is one zero reimbursement claim included in the request for ratification. This claim is Sleeping Buffalo Hot Springs which was declared ineligible at the Board's July 2007 meeting. He noted that included within the weeklies are payment of three Board claims ratified at previous meetings.

Mr. Noble noted there are two claims whose task description is mobilization. Both claims seem expensive to be only for mobilization.

Mr. Wadsworth informed Mr. Noble that the item listed in the Task Description column of the weekly summary is the most expensive item in the claim, but does not represent all costs included in the claim.

Mr. Noble asked that Mr. Wadsworth follow up on those claims at the next meeting.

<u>WEEKLY CLAIM REIMBURSEMENTS</u> September 17, 2007 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
July 18, 2007	39	\$157,609.48
July 25, 2007	12	\$99,481.30
August 1, 2007	12	\$54,701.33
August 8, 2007	2	\$97,301.13
August 15, 2007	14	\$23,712.76
Total	79	\$432,806.00

Mr. King moved to ratify the weekly reimbursements. Mr. Blazicevich seconded. **The motion was unanimously approved.**

Board of Investments

Mr. Wadsworth gave a synopsis of the Board's loan position at this time. He noted that there is currently an outstanding 2002 loan with a balance of approximately \$500,000. The 1997 loan was retired in August, 2007. The Board of Investments has authorized the Petro Board to borrow up to \$2.5 Million. There currently are claims totaling approximately \$3.5 Million approved and waiting for payment. He asked for guidance from the Board with regard to borrowing.

To begin the discussion, Mr. Wadsworth presented several options the Board could consider.

- Continue to pay claims as money becomes available. Historically, the Board has paid approximately \$5 Million in claims each year. The amount sitting on the shelf is a large portion of the amount usually paid in a year.
- The Board currently has \$500,000 in reserve in the bank, as decided at a previous board meeting. Because the Board now has borrowing authority for \$2.5 Million, all or a portion of the money held in reserve could be used to accelerate payment of the claims currently on the shelf, taking the reserve down to zero, or some other figure to be determined. This would give the Board an opportunity to see where things stand at the November Board meeting.
- Borrow \$1 Million, to be used over the next nine months or so, increasing the payments made weekly, but without completely disrupting the current business process.

- Borrow the entire \$2.5 Million that has been authorized, to be used over the next twelve to eighteen months, increasing the payments made weekly, but without completely disrupting the current business process.

Mr. Wadsworth stated that in Fiscal Year 2007, the Board paid out more in claims than it received in revenue from MDT. This was made possible by a \$750,000 settlement of a subrogation claim in the prior fiscal year. However, because of the large amount of work performed during the year, the Board accrued more than \$1.8 Million in claims in the FY 2008 accrual. The end result was that the Board was almost \$2.5 Million over budget for fiscal year 2007, and is currently holding \$3.5 Million in approved claims. He noted that the staff began to alert the Board that a serious budget shortfall was approaching. This could be anticipated by the fact that between board meetings, the approval of corrective action plans was close to \$1 Million, repeated meeting after meeting.

In an effort to balance the budget, the staff has begun obligating money for corrective action plans. The obligation strategy is based upon the priority of the release, and will help control the claims coming to the Board from this point forward. For instance, if a site is low priority and a dig out is proposed, the Board is not likely to want to borrow money to address a low priority site. Therefore, the staff will not obligate the money for the work plan. Mr. Wadsworth suggested taking the Fund's balance to \$100,000, using the remainder of the current \$500,000 to address as many claims as possible, and re-evaluating the need to borrow at the November Board meeting.

Mr. King suggested using the authority to borrow money in a line-of-credit format. Mr. Wadsworth indicated that the borrowing authority can be used in that manner; for instance, a sum could be borrowed periodically, such as quarterly or to coincide with each Board meeting.

Ms. Michels recalled that at a previous meeting, the Board voted to draw down the Fund's reserve from \$1 Million to \$500,000, with the understanding that the Department of Environmental Quality would assist the Board in prioritizing work plan activity. If that did not occur, the reserve would be restored to \$1 Million. She asked if the current Board was attempting to undo that decision.

Mr. Wadsworth confirmed her understanding and noted that, until the Board staff implemented the obligation strategy that obligates money only for high priority sites, little effort was made by the Department to reduce corrective action work plan requests. Nevertheless, as things currently stand, the staff is obligating roughly \$300,000 in work plans each month, while the Department is not limiting their work plan requests to that range. He also noted that there are currently \$7 Million in corrective action uncompleted work plans that have been approved. Historically, about 70% of the costs of approved work plans come in as claims in a given fiscal year, or roughly \$5 Million. Add the \$3.5 Million in claims currently awaiting payment to \$5 million in claims that are anticipated as a result of pending work plans and the Board is looking at ending the year with close to \$9 Million in claims to pay on a budget of \$5 Million. The Board staff has worked with the Petroleum Marketers Association to contact owners and operators and request that non-critical work be postponed for as long as possible. The intent of the prior Board action concerning the Fund reserve was to allow payment of some of the backlog of claims in return for cooperation by the Department in reducing the number and cost of work plans requested. That cooperation was not forthcoming, and as a result the staff put in the obligation strategy on July 1, 2007. With the current ability to borrow money, it is not as necessary to keep the \$1 Million reserve to satisfy the requirements of the federal EPA program.

Ms. Blazicevich recommends the Board not borrow money until there is cooperation from everyone involved to support legislation to correct the problem permanently. This cooperation needs to come from the Governor, the legislators, the petroleum industry, the Department, and anyone else necessary. There should be legislation to raise the fee, at least temporarily. The Board has been warning people for some time that this difficulty was approaching, and no one took it seriously during the legislative session. More serious efforts must be made to hold down costs. Roughly half of the tanks that are being found are old tanks. After twenty years of the program, there should not be any old tanks left. Legislation should be proposed that would separate old tanks from new tanks, and create a trust fund to handle the old tanks, which should have been dealt with years ago. In addition, something must be done to address spills and overfills. A third of current releases are a result of spills and overfills. People must be more responsible about preventing and containing them.

Ronna Alexander, Petroleum Marketers Association, addressed the Board. She expressed agreement with much of Ms. Blazicevich's discussion. That Petroleum Marketers support the Board's position against borrowing money. She also noted that some in the petroleum industry are not members of the Association. She stated that she had addressed the Environmental Quality Council (EQC) on Friday, September 21 and told them that the Association does not want the Board to borrow money until the issue of site prioritization and risk-based assessment is addressed by DEQ in a meaningful way. It is not prudent to borrow money to dig out contamination in areas where there is no risk and the work can be delayed. She informed the EQC that the Association will not support legislation if there is not clear cooperation

from all areas. She has proposed restricting DEQ from forcing cleanups that are more stringent than those for drinking water, or at a minimum asking DEQ to prove that such standards are reasonable and necessary. She also indicated that the Association would support an increase in the fee and higher deductibles, if a workable priority system is developed.

Mr. Arrigo expressed surprise that the Board had been asking for a prioritization system since 2006. He stated that work can be focused on the high priority sites, but that does not eliminate the obligations for the middle and low priority sites. DEQ is also getting pressure to close sites, and those are the lowest priority sites. DEQ feels it is necessary to work on all the sites. Taking the approach advocated at this meeting would mean ignoring some of the medium priority sites, and DEQ is not willing to do that. He suggested that perhaps in some cases too much soil is being removed and DEQ should evaluate that issue. DEQ is cooperating. He reiterated his call for a work group to address development of legislation for the 2009 legislative session.

He also addressed the issue of enforcement. When groundwater becomes polluted with benzene, the Water Quality Act has been violated. The enforcement division has not fined any owner or operation for polluting the groundwater, as it does other industries for causing degradation of waters of the state. These are significant violations. With the current priority system in place, sites with a priority of 1 or two may, in the future, be sent to the enforcement division for an enforcement action. Priority 1 sites are those with releases about which DEQ knows very little and must investigate to learn about the risks. Priority 2 sites are those that pose clear, obvious risks to public health or the environment, such as drinking water or surface water contamination, vapors in an occupied building, and so forth. If owners or operators of those sites indicate they will not perform required work because they will not be reimbursed, the enforcement division will force them to do the work. The same will not be true of medium priority sites.

He indicated that he is not in favor of risk analysis. He does not believe consultants can perform an objective analysis. In addition, risk analysis must be done in a very thorough manner for it to mean anything, and is very expensive, requiring a great deal of data and investigation. DEQ is willing to grant extensions for the medium priority sites, but based on DEQ's decisions, not those from the regulated community.

It is not fair or accurate to portray the Department as uncooperative in the current problem.

Mr. Hertel asked Mr. Arrigo if he is saying that the consultants don't know what they are talking about, but the Department does.

Mr. Arrigo stated that risk analysis is a complex science. It is done at Superfund sites, where the Department will do the calculation or hire a consultant to do the calculation. Such analyses cost many thousands of dollars. Much more information must be gathered to do an adequate risk analysis than is usually done at a petroleum site. The data gathered on a petroleum site are not of the same quality as that gathered for a Superfund site, and are very suspect. Slug tests, such as are done at petroleum sites, are very inaccurate. In addition, if an owner asked a consultant to perform a risk analysis, Mr. Arrigo would not believe it, because of the inherent relationship between the owner and the consultant.

Mr. Noble disagreed with Mr. Arrigo. He was just at a conference in Calgary where part of the discussion was about how accurate slug tests are. Other states, as well as the American Society for Testing and Materials, have developed risk-based assessment protocols that have been in place for ten years or more. The methods and protocols are there. The matter has been given serious national scrutiny. In other states, consultants perform the analyses and the DEQ reviews the analysis for accuracy.

Mr. Arrigo indicated that the consultants, DEQ and the regulated community need to determine what type of risk analysis is appropriate. Until then, the analysis will vary significantly in quality. He also does not feel that risk analysis is accurate enough to deal with such situations as that found at the Bull River Phillips 66 in Noxon.

Dennis Franks, AJM Inc., bringing the discussion back to the loan authority, reminded the Board that many consultants represent small operators or owners who do not have the means to borrow the money to pay large costs. As a result those owners designate their consultants to receive payment, which has resulted in those consultants carrying the costs. In addition, the consultants who will have to borrow as a result of this cash flow difficulty will not be able to borrow at the low rates available to the Petro Board, and will not be able to recoup their interest through claims. He also indicated that costs have gone up, while the amount coming into the fund has not increased since the inception of the Fund. He strongly urged the Board to borrow now.

He also agreed with Ms. Blazicevich that more can be done to prevent spills and overfills, and that owners and operators must conduct their business responsibly.

Ms. Michels moved to draw the available funds down to \$100,000, not borrow money at this time, and reconsider other options at the November meeting. Mr. King seconded. The Vice-Presiding Officer asked for additional comments.

Earl Griffith, Tetra Tech, Inc., stated that he would like the Board to consider that the Board's financial situation is very difficult for the small consultants. He thinks there is an obligation on the part of the Board to reimburse in a reasonable time. He noted that it is becoming very difficult to get subcontractors to be willing to work on Petro Board sites.

The motion was unanimously approved.

2009 Legislation

Mr. Wadsworth reminded the Board of the four main topics previously discussed for possible legislation at the 2009 legislature: Above ground Storage Tanks (ASTs), Double Walled tanks, changes to the copay amount and structure, and an increase in the fee.

With regard to ASTs, the staff recommends requiring an inspection every three years for an AST to become eligible for the fund. This will assist in assessing the potential liability to the fund from ASTs and help manage that liability. The staff would establish a checklist for owners/operators to evaluate their facility's compliance. The owners/operators could then be kept up to date with currently established regulatory requirements.

The 2005 Energy Policy Act now requires double wall tanks for new installations and when old tanks are replaced. The Board does not currently require a co-pay on double wall tanks, as an incentive for owners/operators to upgrade to such tanks. Because the double wall tanks are now required, the Board may wish to change the copay on double wall tanks in some manner.

The Board has discussed changes to the co-pay structure and amount at previous meetings. The discussions addressed changing the amount of the co-pay in line with the Consumer Price Index (CPI), as well as changing the co-payment amount based on the number of releases at a site.

The staff recommends that the Board propose a fee increase of one-quarter of one cent. The fee increase could be for the short-term, medium-term or permanent. A long-term increase would be helpful if the above-ground storage tank program gets underway.

Tom Livers, Deputy Director, encouraged the Board to create a work group to bring as many of the stakeholders together as possible in order to draft a bill that will have some success getting through the legislature. The fee increase proposal, in particular, is a consumer fee, not an industry fee. The proposal for the 2007 legislature was late and did not have time to gather support. The DEQ is willing to help set up the stakeholder group

Ms. Michels noted that, despite the recent increase in the cost of fuel, there was not a significant increase in fee received by the fund.

Mr. Wadsworth pointed out that the fee is a flat amount per gallon and is not affected by the price of fuel. However, most of the revenue to the fund comes from the transportation of goods, rather than the use of private automobiles. The more goods that are transported by truck, the more revenue the Fund receives.

Mr. Livers noted that all parties will need to make as compelling a case as possible about unmet needs. Recent legislation that has relied on pointing out the increase in the CPI as justification for fee increases has been rejected by the legislature. The Board and DEQ will need to do a careful job of pointing out what work is necessary that is not getting done, what the impacts are and whom it is impacting.

Ms. Blazicevich suggested that an additional item should be developing an incentive for preventing spills and overfills. She also suggested developing a strategy to be proactive in addressing old tanks. The old tanks must be disposed of, because they are presenting a significant burden to the fund. She suggested perhaps setting up a separate fund to address old tanks, perhaps older than 1986 or 1988, and make it clear that if these tanks are not found and removed, they will not be eligible for the fund later. Perhaps some clean-ups could be held until several in the same area could be addressed together at one time.

Mr. Arrigo suggested that the work group should broaden the area of evaluation to include not only the Petroleum Tank Release Cleanup Act, but the Underground Storage Tank Act, the Water Quality Act and others, as well, with an eye to addressing the cleanup standards or the concept of institutional controls.

Mr. Wadsworth commented that states that require annual inspections have fewer and less severe releases. Perhaps the Board could consider requiring annual inspection as a condition of eligibility, even though the state regulation requires inspection only every three years.

The Board members asked Mr. Wadsworth to set up a working group before the next Board meeting, and to have the group address as many areas as possible. Ms. Blazicevich volunteered for the group. Several other people were suggested. Mr. Wadsworth will approach other possible stakeholders for participation in the group, including DEQ, the Petroleum Marketers Association, consultants, the Fire Marshal, Motor Vehicle Carriers, the insurance industry, owners and operators, petroleum equipment installers/removers, environmentalists

Fiscal Report

Mr. Wadsworth noted that two fiscal reports are available; June 30, 2007 (Year end FY07) and July 31, 2007 (FY08). As has been discussed, the reports show the Fund with a negative net worth that is getting larger as time goes on. He pointed out that the estimated 2008 budget assumes an accrual of \$500,000 at the end of the year. That is subject to change.

Board Attorney Report

Pam Collins, substituting for Paul Johnson, informed the Board that, in the matter of Town Pump Dillion, Town Pump has filed its reply brief, and the case is now awaiting classification by the Supreme Court. Unless the Court requires oral argument, all that remains is for the Court to render a decision.

In the case of Cenex Harvest States in Havre, a hearing date has been set for July 21, 2008. Discovery is just beginning. Cenex has raised the issue of whether the Board has sanctioned Cenex more harshly than it has sanctioned similarly situated owners and operators who have been issued DEQ orders for failure to conduct release detection and maintain release detection records.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently Insurance coverage
Dillon	Town Pump #1	01-08695 Release #4144	Eligibility – contested 03/07/05	
Great Falls	On Your Way	07-09699 Release #3633	Adjustment to future claims	Hearing requested 2/15/07 Awaiting identification of attorney
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	Hearing requested 2/15/07 Awaiting identification of attorney
Whitefish	Stacey Oil - Don Gray	15-04428 Release #1034	Adjustment to future claims	Hearing requested 2/15/07 Awaiting identification of attorney
Silver Gate	Hightower property	56-14109	Eligibility contested 5/29/07	Hearing requested 5/29/07. Hearing stayed until Supreme Court rules in Dillon matter
Havre	Cenex Supply & Marketing	21-07467	Eligibility contested 8/14/07	Scheduling Order signed 8/28/07. Hearing set for 7/21/08

Board Staff Report

Mr. Wadsworth noted that 36 eligibility applications were received between January and August, 2006, compared to 29 for the same period in 2007. That is down about 19% per year over the previous year. The number of claims received for similar periods in 2006 and 2007 is essentially unchanged. The value of claims received is significantly higher in January, June and July of 2007, compared to the same months in 2005 and 2006.

Mr. Wadsworth explained that a number of plans are being approved by DEQ but not obligated by the Board staff. If a plan is not obligated, the owner/operator is told that if he wishes to go forward with the work, he will probably not be reimbursed for two to three years.

Petroleum Release Section Report

Mr Arrigo stated that the PRS section is implementing its new prioritization system. The new system runs from 1 through 8. They are working on getting changes made to their database software to allow the new priority numbers to be entered and used. They are identifying sites that will be classified as groundwater management or long-term monitoring. Over 200 of the 1658 active sites are in long-term monitoring.

He also informed the Board that the section has been reorganized. The people who work on eligible or potentially eligible petroleum release sites have been grouped into a new section, the Petroleum Technical Section. Scott Gestring is the acting section head. Jeff Kuhn will be manager of the Leaking Underground Storage Tank and Brownfields Section. The LUST program is funded by an EPA grant and addresses sites where no responsible party has been identified. The Brownfields program is also federally funded.

Mr. Michels asked for a presentation on the new priority system. Mr. Arrigo agreed.

Public Forum

Michael Blend, Beargrass Holdings, told the Board that Beargrass purchased the property where Michael's Exxon is the tenant in Kalispell in late June. In July, fuel appeared in the storm system. None of the parties have insurance that appears to cover the release. He asked for the Board's assistance. This is an emergency response, and a great deal of work has already been done on the site to recover product. His consultant, PBS&J, has asked that he request a special meeting before the November meeting to address the eligibility application, because they are approaching \$500,000 in costs, so far.

Mr. Hicks told the Board that the eligibility application has just been received and it will take at least 30 days to review and determine the staff's recommendation. Calling a special meeting would be unusual and in this case probably not helpful.

Mr. Franks again urged the Board to consider borrowing money, because emergency situations occur all the time, and consultants and contractors cannot function if they don't receive payment for their work in a timely manner.

Ms. Blazicevich urged the audience to contact the Governor and their legislators about possible solutions to the financial situation of the Board.

The audience was informed that the meeting would continue with Board training for the next hour. No business would be conducted or decisions made. Members of the audience were welcome to remain, if they wished. No one elected to remain.

The training session began at 2:13 p.m.

Roger Noble – Vice-Presiding Officer